The Chamber of Tax Consultants

Discussion on certain significant proposals in the Finance Bill 2021

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Corporate taxation and reorganization including incentives for business:

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- TDS and TCS related amendment
  - S. 194Q: Deduction of TDS on payment of certain sum for purchase of goods
  - S. 206AA- Non furnishing of PAN for TDS for sale of goods
  - Special provision for higher rate of TDS/TCS for non-filers of income-tax return
- Dispute Resolution Scheme
- Other important proposals:
  - Amendments related to filing of ROI u/s. 139
  - Amendments to time limit for assessments u/s. 143 and u/s. 144
  - Faceless ITAT
  - Discontinuation of SetCom and setting of Interim Board for disposal of pending applications
  - Amendments in Direct Tax Vivad Se Vishwas Act 2020 (VSV)
  - Amendments related to Income Declaration Scheme 2016 (IDS)

Goodwill of business or profession not eligible for depreciation [w.e.f. AY 2021-22]

Existing scope on goodwill depreciation

Prior to proposed amendment by FB 2021

- S. 2(11) r.w.s. 32 allows depreciation on tangible and intangible assets
  - Intangible assets specifically covered for depreciation claim includes know-how, patents, copyrights, trademarks, any business or commercial right etc.
  - No specific reference or inclusion of goodwill for depreciation as intangible
- Question was placed before SC in case of Smiffs Securities (348 ITR 302) on eligibility of depreciation on goodwill
  - Before SC, excess consideration was paid for securing reputational advantage and retaining client which was clubbed as goodwill
  - SC regarded such goodwill as acquisition of “business or commercial right” eligible for depreciation
- Pursuant to SC decision, any intangible benefit or right acquired by the taxpayer qualified as “goodwill” eligible for depreciation u/s. 32
  - Various courts have allowed depreciation on goodwill on transaction of slump purchase/ amalgamation following the ratio of SC decision in case of Smiffs securities.

Proposed scope on goodwill depreciation

Proposed amendment by FB 2021

- S. 2(11) definition of block of asset, S. 32(1)(ii) and Explanation 3 to s. 32 are proposed to be amended to specifically exclude goodwill of business or profession from being eligible for depreciation
- Amendment is proposed to be made applicable from AY 2021-22
  - Taxpayers may not be eligible to claim depreciation on goodwill from FY 2020-21 onwards
- EM provides following reasons for excluding depreciation on goodwill:
  - Valuation of goodwill is dependent on value of business which could increase or decrease depending on various factors unlike other tangible/ intangible assets
  - There may not be justification to provide for consistent depreciation on goodwill where value could fluctuate upwards or downwards

Proposed scope on goodwill depreciation

- Further, following consequential amendments are proposed:
  - Taxpayers who have claimed depreciation on goodwill in FY 2019-20, manner to be prescribed for determining WDV of such block and mechanism of computing Short Term Capital Gain (STCG) for the purpose of s. 50
  - Cost of acquisition of goodwill for capital gains purpose u/s. 55 would be either of the following:
    - If goodwill is purchased from any other taxpayer - Actual acquisition cost as reduced by depreciation, if any, claimed upto FY 2019-20;
    - Where acquisition is pursuant to s. 49(1) tax neutral transfers - Actual cost of goodwill in hands of transferor/ previous owner as reduced by depreciation, if any, claimed upto FY 2019-20
    - In all other cases, it would be Nil which may include transfer of self-generated goodwill

Proposed scope on goodwill depreciation

Impact analysis

- S. 43(6)(c) requires reduction of WDV only in case of sale, disposal, discard and demolish. In absence of same, ambiguity for continuance of depreciation on opening WDV without any reduction
  - No amendment proposed in s. 43(6)(c) similar to s. 50 for computing WDV

  Where block only comprise of goodwill, arguably even in absence of amendment u/s. 43(6)(c), depreciation may not be available as asset itself ceases to exist

  Where the intangible asset comprise of various intangibles including goodwill, the ambiguity would arise on future depreciation claim on such block of asset as also how to identify/ reduce the quantum of goodwill

Impact analysis on goodwill claimed upto FY 2019-20

- Amendment is proposed to be applicable from FY 2020-21
- Amendment would not impact the past position on goodwill depreciation for years prior to FY 2020-21
  - EM mentions that goodwill cost could be Nil in hands of transferee in tax neutral transfers
  - Tax Department may place support on EM to deny depreciation for past years which are acquired for first time pursuant to tax neutral transfers or by applying fiction of 6th proviso to s. 32 or such other fictions wherever applicable

Proposed scope on goodwill depreciation

Impact analysis - Miscellaneous

- Shortfall in advance tax to be evaluated where goodwill depreciation was considered to determine advance tax liability
- UAD of FY 2020-21 onwards comprising of depreciation on goodwill for past years likely to be allowable as set off against profits of future years i.e. FY 2020-21 onwards.
  - Earlier year depreciation is deemed to be part of current year depreciation and may not require to fulfil eligibility test again.

Widening the scope of slump sale taxation [w.e.f. AY 2021-22]

Existing scope of slump sale taxation under s. 50B

- CG taxation arises on transfer of any capital asset
- The term “transfer” is defined in inclusive manner u/s. 2(47) to, inter alia, include:
  - Sale, exchange, extinguishment of rights, relinquishment
- S. 2(42C) r.w.s. 50B deals with capital gains taxation on transfer of undertaking by way of slump sale
  - Slump sale is defined u/s. 2(42C) to include transfer of undertaking by way of “sale” for lump sum consideration
  - CG = Lump sum consideration less tax net worth of the undertaking
- Since the definition of slump sale specifically require the transfer of undertaking by way of “sale”, the courts have held where undertaking was transferred by way of “exchange”, s.50B will have no applicability. Refer, for instance:
  - Bharat Bijlee [(2014) 365 ITR 258 (Bom HC)]
  - Areva T&D India [(2020) 428 ITR 1 (Madras HC)]

Proposed scope of slump sale taxation u/s. 50B

- Definition of slump sale is widened to cover all types of transfer
- Transfer of undertaking by way of “exchange” or any mode prescribed in the definition of term “transfer” would trigger capital gains taxation
  - Applies to slump exchange undertaking on or after 1 April 2020
  - Favorable precedents on slump exchange are overruled by proposed amendment
- In case of an exchange, taxation is likely to be at FMV of the asset received and not at agreed value
- The amendment is applicable from 1 April 2021 (i.e. AY 2021-22)
  - Any transfer on or after 1 April 2020 would be governed by proposed amendment
  - Interest consequence on advance tax shortfall to be evaluated for transfers made in FY 2020-21 unless could be set off against losses or UAD.

Interest levy u/s. 234C of the Act: Impact arising on account of amendments becoming applicable from FY 2020-21

S. 234C interest pursuant to amendment applicable from FY 2020-21

- Significant amendments such as denial depreciation on goodwill, taxation on slump exchange, taxation on cash settled account of retired partner, disallowance of PF contribution to employers apply from 1 April 2020
  - Advance tax instalments paid till 15 December 2020 likely to fall short and trigger s. 234C levy since amendments were not understandably within contemplation of taxpayers
- Taxpayer may have to pay catch up advance tax on 15 March 2021
- Unfortunately, no back amendment is made in s. 234C to relieve the taxpayers of default.

S. 234C interest pursuant to amendment applicable from FY 2020-21

- Taxpayer may need to evaluate one or more of the following alternatives
  - In substance, the amendment is retrospective as it applies to concluded transactions when the law as of the date of transaction was different.
  - In certain cases such as goodwill depreciation or taxation of a retired partner, or deductibility of belated employee contribution of PF, the issue is covered by SC as also favourable jurisdictional High Court decision.
  - Reliance may be placed on order no. F.No.400/29/2002-IT(B) dated 26 June 2006 for waiver of 234C interest by arguing fulfilment of condition at para 2(c)
  - Application for waiver of interest u/s. 234C needs to be considered judiciously and favourably once conditions are fulfilled or the scenario is comparable to the enumerated circumstances.
    - Further, reference could be made to Guj HC decision in the case of Devarsons P Ltd. Vs UP Singh [(2006) 284 ITR 36] which permitted waiver even where requirement of existence of jurisdictional HC decision was not available and income came to be taxed only on account of retrospective amendment

Safe harbour increased to 20% for specified period u/s 43CA and 56(2)(x) of ITA [w.e.f. 01 April 2021]

Safe harbour increased to 20% for specified period u/s 43CA and 56(2)(x) of ITA [w.e.f. 1 April 2021]

- S. 43CA of ITA provides for notional taxation on transfer of land or building or both held as stock in trade for a consideration less than Stamp Duty Value (SDV), wherein SDV is deemed to be full value of consideration for computing business income.
- Further, s. 56(2)(x) of ITA provide for notional taxation in case where taxpayer receives immovable property, for a consideration which is less than SDV by an amount exceeding INR50,000.
- S.43CA and s. 56(2)(x), provide relaxation to certain cases where the consideration from transfer of land or building or both, is less than the SDV and the difference between actual consideration and SDV is less than 10% of actual consideration, in which case the actual sale consideration is deemed to be full value of consideration for the purposes of computation of business income and other income
- In order to revive demand in real estate sector, FB 2021 further proposes to relax provision of s. 43CA by increasing safe harbour threshold from existing 10% to 20% subject to below conditions:
  - Transfer of residential unit takes place from 12 November 2020 to 30 June 2021
  - Transfer is by way of first time allotment of the residential unit to any person
  - Consideration received or accruing as a result of such transfer does not exceed INR 2 Cr
- Intent is to enable real-estate developers to liquidate their unsold inventory at a lower rate to home buyers.
- Consequent amendments have also been made u/s 56(2)(x) for home buyers.

S.44AB: Relaxation in tax audit threshold [w.e.f. 1 April 2021/ AY 2021-22]

S. 44AB: Relaxation in tax audit threshold [w.e.f. 1 April 2021/ AY 2021-22]

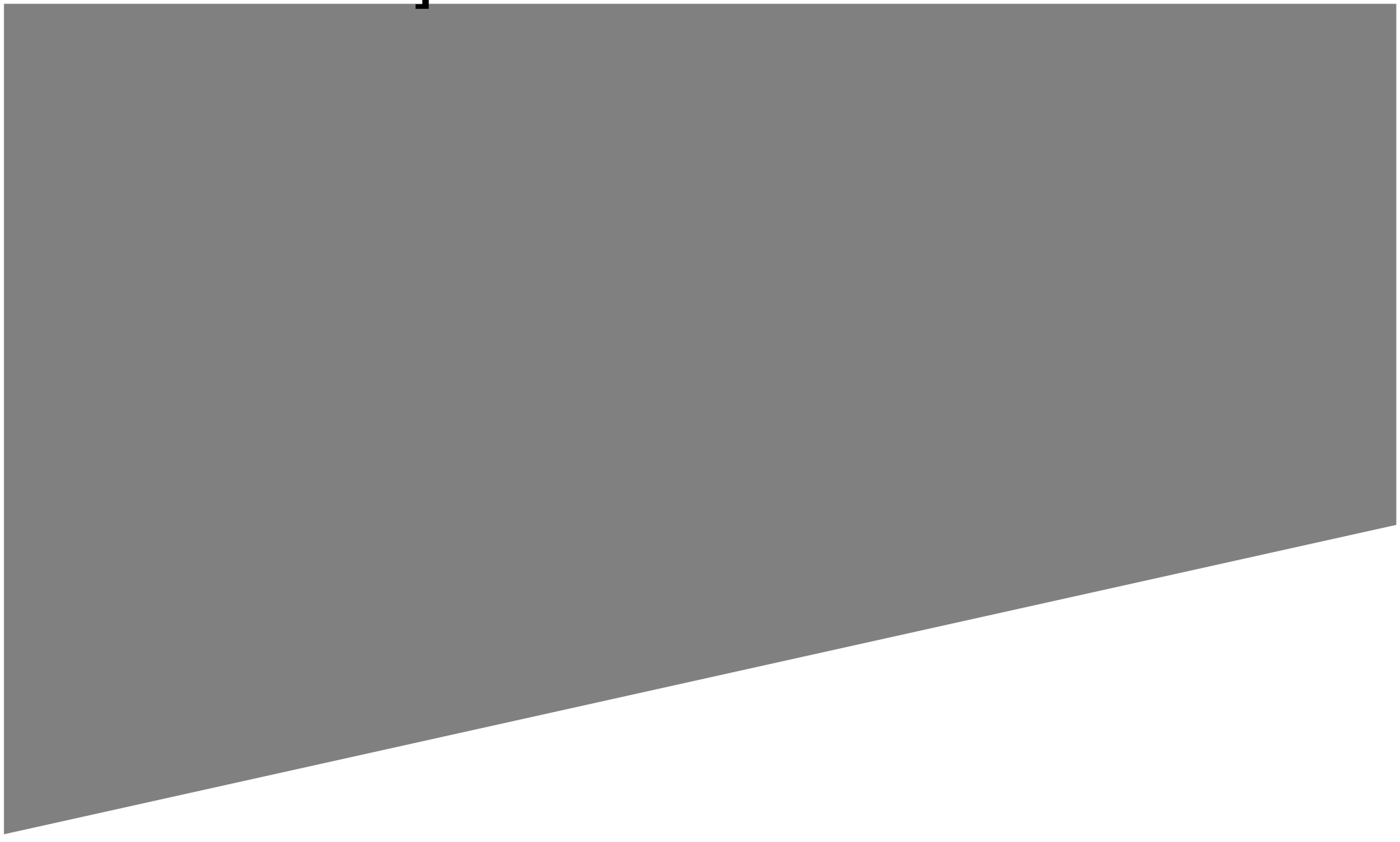
- **Existing provision:**
  - S. 44AB provides following threshold limits for tax audit:
    - Business – total sales, turnover or gross receipts > Rs. 1 Cr. in any previous year
      - FA 2020 increased the threshold limit for business from Rs. 1 Cr. to Rs. 5 Cr, if:-
        - Aggregate of all amounts received including amount received for sales, turnover or gross receipts during the previous year, in cash ≤ 5% of the said amount
        - Aggregate of all payments made including amount incurred for expenditure, in cash, during the previous year ≤ 5% of the said payment
    - Profession – gross receipts > Rs. 50 L in any previous year
- **Proposed amendment:**
  - Limit has been further increased from Rs. 5 Cr. to Rs. 10 Cr. for businesses where aggregate of all receipts/ payments in cash during previous year is ≤ 5% of the said amount

LLP ineligible to avail presumptive taxation scheme for profession [s. 44ADA] [w.e.f. 1 April 2021, AY 2021-22]

LLP ineligible to avail presumptive taxation scheme for profession [s. 44ADA] [w.e.f. 1 April 2021, AY 2021-22]

- Existing s. 44ADA provides presumptive taxation scheme for an **taxpayer,** being a resident in India, who is engaged in a profession notified u/s. 44AA whose total gross receipts do not exceed INR 50 L in a previous year
  - Income presumed as 50% of total gross receipts or if higher sum is earned, such higher sum
- EM to FA 2016 provided that s.44ADA *"will apply to such resident assessee who is an individual, HUF or partnership firm but not LLP"*
  - However, language of s.44ADA suggested that provision applies to all professional taxpayers including LLP
- FB 2021 proposes to amend s.44ADA to provide that only following resident taxpayer are eligible:
  - Individual
  - HUF
  - Partnership firm other than LLP as defined u/s. 2(1)(n) of LLP Act, 2008
- EM reiterates earlier understanding that s. 44ADA does not apply to LLP
  - Reason is that LLP is required to maintain books of accounts in any case under LLP Act
- Even in practice, LLP was not allowed to file ITR 4- Sugam – for presumptive tax filers

Transfer of capital asset to partner on dissolution or reconstitution of partnership firm/AOP/BOI [w.e.f. 1 April 2021 / AY 2021-22]



Existing scheme of taxation of partnership firm

- S. 45(4) provides for capital gains taxation in hands of firm, on transfer of capital asset to partners, by way of distribution, on dissolution or otherwise
  - Capital gains = FMV of capital asset on the date of distribution minus cost/WDV
  - Retirement of partner resulting into withdrawal of cash to represent value of partner's interest (beyond his capital balance) is not hit by s. 45(4)
    - What partner receives is his share in the firm and not any consideration for 'transfer' of his partnership interest
  - Retirement of partner resulting into distribution of capital asset by firm
    - Term "or otherwise" in s. 45(4) also includes retirement and triggers s. 45(4) - A.N. Naik Associates [2004] 136 Taxman 107 (Bom HC)
    - However, contrary view expressed by Madras HC in case of National Company v. ACIT [2019] [105 taxmann.com 255] that division of assets on retirement does not trigger s.45(4)

Proposed scheme of taxation – S. 45(4)/(4A)

- Existing s. 45(4) proposed to be substituted by new ss. 45(4) and (4A)
- **FM's speech:** *"In order to provide certainty, it is **proposed to rationalise the provisions** relating to taxation of the assets or amount received by partners from the partnership firm in excess of their capital contribution"*
- EM to FB 2021 introduces amendment as a "rationalisation" measure
  - As per EM, there is uncertainty regarding applicability of s. 45(4) to a situation where assets are revalued or self-generated assets are recorded in the books of firm, and payment is made to partner in excess of his capital contribution
  - Applies also to AOP/BOI (not being a company or a cooperative society); also covers LLP

Proposed scheme of taxation – Proposed s. 45(4)/(4A) [Provisions adapted in context of firm/LLP]

	When triggers?	Who is taxable?	Year of taxation?	Computation	Sale consideration	Cost
(4)	*where a [partner] receives during the previous year any capital asset at the time of dissolution or reconstitution of the [firm], which represents the balance in his capital account in the books of accounts of such [firm] at the time of its dissolution or reconstitution, then*	*any profits or gains arising from receipt of such capital asset by the [partner] shall be chargeable to income-tax as income of such [firm] under the head "Capital gains"*	*and shall be deemed to be the income of such [firm] of the previous year in which such capital asset was received by the [partner]*	*and notwithstanding anything to the contrary contained in this Act, for the purposes of section 48,–*	*(a) fair market value of the capital asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset; and*	*(b) the cost of acquisition of the capital asset shall be determined in accordance with the provisions of this Chapter:*
(4A)	*where a [partner] receives during the previous year any money or other asset at the time of dissolution or reconstitution of the [firm], which is in excess of the balance in his capital account in the books of accounts of such [firm] at the time of its dissolution or reconstitution, then*	*any profits or gains arising from receipt of such money or other asset by the [partner] shall be chargeable to income-tax as income of such [firm] under the head "Capital gains"*	*and shall be deemed to be the income of such [firm] of the previous year in which such money or other asset was received by the [partner]*	*and notwithstanding anything to the contrary contained in this Act, for the purposes of section 48,–*	*(a) value of any money or the fair market value of other asset on the date of such receipt shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of such capital asset; and*	*(b) the balance in the capital account of the [partner] in the books of accounts of the [firm] at the time of its dissolution or reconstitution shall be deemed to be the cost of acquisition:*

Comparative analysis of erstwhile s. 45(4), new s. 45(4) and s. 45(4A)

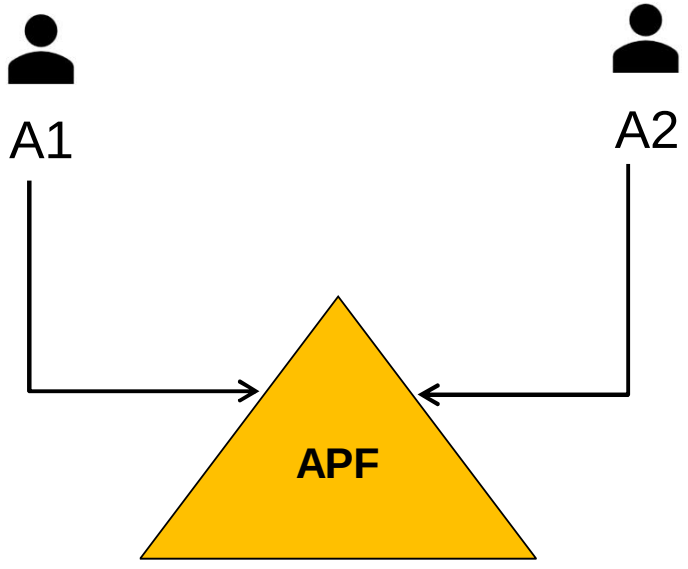
S. No	Parameters	Erstwhile s. 45(4)	New s. 45(4)	New s. 45(4A)
1.	Taxable entity	Firm*	Firm*	Firm*
2.	Event of trigger of taxability	Transfer of capital asset by way of distribution on dissolution or otherwise of the firm	Receipt of capital asset by the partner at the time of dissolution or reconstitution of the firm - which represents the balance in his capital account	Receipt of money or other asset by the partner at the time of dissolution or reconstitution of the firm - which is in excess of the balance in his capital account**
3.	Year of taxability	Transfer as aforesaid	Receipt of capital asset by the partner	Receipt of money or other asset by the partner
4.	Quantum of consideration	FMV of the capital asset as on the date of transfer to the partner	FMV of capital asset as on the date of receipt by the partner	Value of money or FMV of other asset on the date of receipt by the partner
5.	Cost of acquisition	To be determined as per s.48/49 in respect of capital asset transferred	To be determined as per S.48/49 in respect of capital asset received by the partner	Balance in partner's capital account in the books of the firm at the time of dissolution or reconstitution**

** While the above table is based on partnership firm and the partner, it will apply equally to AOP/BOI and their members*
*** Partner's capital account balance is computed ignoring revaluation - Refer later slides*

Comparative analysis of erstwhile s. 45(4), new s. 45(4) and s. 45(4A)

S. No	Parameters	Erstwhile s. 45(4)	New s. 45(4)	New s. 45(4A)
6.	Provision for step-up of cost arising due to taxation in the hands of the firm	Not applicable as asset is no longer with the firm	Not applicable as asset is no longer with the firm	Proviso to S.48 contemplates step up in respect of undistributed assets to be calculated in prescribed manner (refer case study illustrating impact)
7.	Step up of asset cost in the hands of the recipient partner	FMV based on general principles	FMV based on general principles	The other asset when received can be considered at FMV based on general principles.

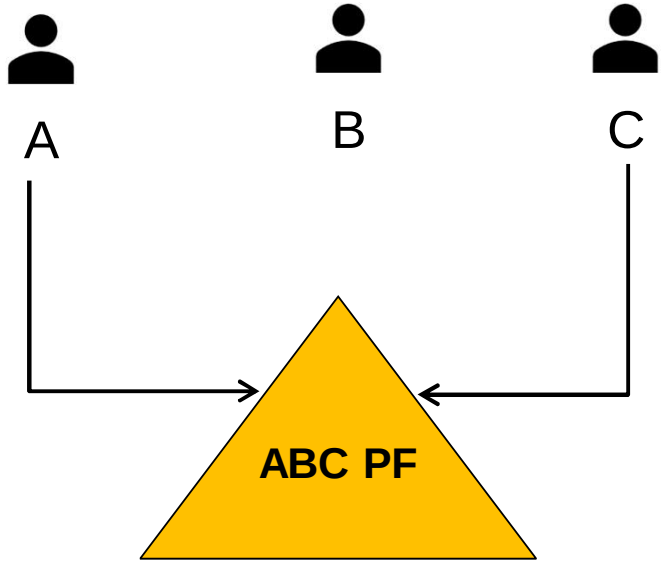
Case Study 1 – In-specie distribution on dissolution: s. 45(4) now and then



Indicative balance sheet			
Capital		Land (FMV 1L)	10,000
A1	5000		
A2	5000		
Total	**10,000**	**Total**	**10,000**

- APF has two equal partners A1 and A2
- Capital of A1 and A2 is 5,000 each and is represented by land acquired by the firm in the past by investing capital of 10,000 contributed by partners
- The firm is to be dissolved as its purpose is frustrated and land is not to be developed
- On dissolution, land is distributed equally between A1 and A2
- FMV of land as on the date of distribution is 1 L
- Tax implications u/s. 45(4) (up to March 2020)
  - FMV as on the date of transfer will be adopted for taxation u/s. 45(4) in the hands of the firm
- Tax implications u/s. 45(4) (effective from 1 April 2020)
  - FMV as on the date of receipt will be adopted for taxation u/s. 45(4) in the hands of the firm

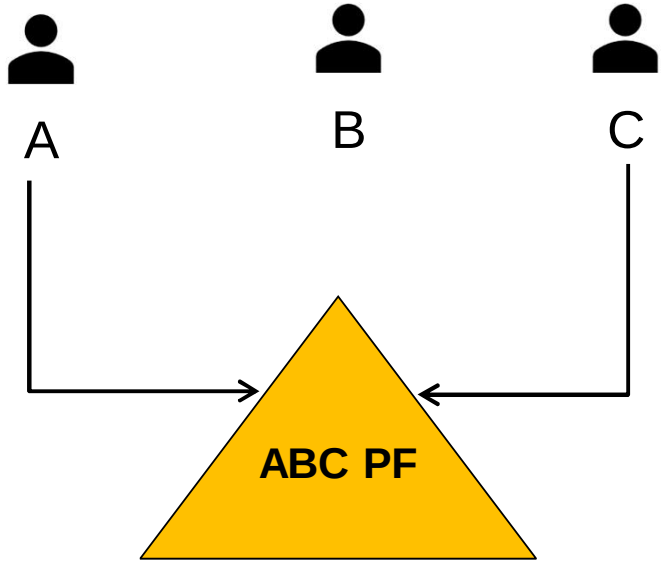
Case Study 2 – Retirement of a partner: effect of s. 45(4A)



Balance sheet			
A Capital	1,000	Property (FMV 15,000)	6,000
B Capital	2,000		
C Capital	3,000		
Total	**6,000**	**Total**	**6,000**

- ABC PF has 3 partners having equal PSR but with unequal capital contribution
- ABC PF has land with book value of 6,000 while FMV is 15,000
- Appreciation of 9,000 belongs equally to 3 partners
- A retired from the firm and PF settled his account in accordance with the partnership deed after taking into account intrinsic value of the property
- A is paid 4,000 in settlement of his account as against capital balance of 1,000 immediately prior to retirement
  - 4,000 is represented by capital of 1,000 plus proportionate 1/3rd share in the appreciation of 9,000
- Refer next slide for tax implications

Case Study 2 – Retirement of a partner: effect of s. 45(4A)



Balance sheet			
A Capital	1,000	Property (FMV 15,000)	6,000
B Capital	2,000		
C Capital	3,000		
Total	**6,000**	**Total**	**6,000**

- Tax implications if A retired on March 2020
  - Cash payment to settle account of retiring partner does not result in transfer or tax trigger for firm or the partner
  - The cost of property in the hands of the firm continues to be historical cost of 6,000
- Tax implications if A retired in April 2020 and S.45(4A) applies
  - S.45(4A) applies as A is receiving 4,000 in settlement of his account which is in excess of capital balance of 1,000 (revaluation credit of 9,000, if any, in books of firm is ignored – refer next slide)
  - ABC PF is liable to pay tax on 3,000 (i.e. receipt by A of 4,000 as reduced by A's capital balance of 1,000)
    - Questions will arise about applicability of indexation, LTCG/STCG nature of gain - if capital is contributed over years
    - In terms of proposed s.48(iii), a suitable cost step up for the property retained by ABC PF can be provided as per prescribed rules
  - ABC PF may need to explore s.234C waiver potential for shortfall of tax arising due to FB 2021 proposal

Other amendments in relation to proposed s. 45(4) and s. 45(4A)

- Provisos to be inserted in both the sub-sections which state that partner's capital account balance in the books of the firm is to be calculated without taking into account the increase in capital account of the partner due to:
  - Revaluation of any asset or
  - Self-generated goodwill or
  - Any other self-generated asset
- "Self-generated goodwill" and "self-generated asset" mean goodwill or asset, as the case may be, which has been acquired without incurring any cost for purchase or which has been generated during the course of the business or profession

Thoughts/issues

- Distinction between proposed s. 45(4) and (4A) is ambiguous
  - Gain is effectively to partner, but tax is on firm – in case of retirement, tax incidence goes on other partners
  - Requirement of s. 45(4) suggesting that receipt needs to be of a capital asset which represents the balance in his capital account in the books of the firm is unclear
  - Is this requirement fulfilled only if the partner has positive capital balance (without considering impact of revaluation) and value/book value of asset distributed is lower than such capital balance?
  - Is reference in s. 45(4A) triggering charge when receipt of money/other asset is in excess of capital balance linked to adequacy of capital vis-à-vis asset received?
    - Also, is it that s. 45(4A) triggers charge for receipt of money/other asset other than capital asset of firm?
  - Question will also arise if the charge is to be restricted to the value of asset received if the capital balance of the partner for the purpose of s. 45(4A) is negative after ignoring revaluation
    - To illustrate, consider partner A has balance of 25,000 after considering revaluation credit of 35,000
    - In terms of s. 45(4A) Explanation, the capital balance will be considered to be (10,000)
    - Assume that partner A is paid 5,000 on his retirement, tax liability triggered by the firm is of 5,000 (being the cash receipt) or 15,000 [being 5,000 – (10,000)]?

Thoughts/issues

- While proposed s.45(4)/(4A) triggers tax liability in the hands of firm/AOP, the charge is linked to **receipt** by partner/member from firm/AOP in any previous year
  - As compared to that, charge under existing s.45(4) is linked to “transfer” of a capital asset by way of distribution
  - Conspicuously, no amendment is proposed to definition of “transfer” u/s. 2(47)
  - Receipt by partner does not result into “transfer” of any capital asset by partner or realisation of consideration by partner; also, no ‘profits and gains’ may arise to partner on “receipt” - can charge be regarded as failing?
- Where partner retires in year 1 and firm recognises partner as creditor in year 1, but partner actually receives cash in year 2, is s. 45(4)/(4A) triggered?
  - Will charge be in year 1 or year 2?
  - Whether the word ‘receive’ will include right to receipt basis SC decision in case of Standard Triumph Motor Co. Ltd. v. CIT (201 ITR 391)?

Thoughts/issues

- Whether s. 45(4A) also applies for payment of money out of partner's current account balance?
- S. 45(4A) creates ambiguity on coverage of distribution of stock-in-trade as it still determines FMV for "capital asset" while triggering charge in respect of receipt of "any other asset"
- Proposed amendment applies from 1 April 2021 – but affects revaluation which has happened in the past

Thoughts/issues on scope of “reconstitution” or dissolution

- ‘Reconstitution’ is not defined in ITA or in LLP Act, 2008 or Indian Partnership Act, 1932
  - Can one import s.187(2)(b) for the purposes of s. 45(4)/(4A)?

    “(1) Where at the time of making an assessment under section 143 or section 144 it is found that a change has occurred in the constitution of a firm, the assessment shall be made on the firm as constituted at the time of making the assessment.

    *(2) **For the purposes of this section**, there is a change in the constitution of the firm—*

    (a) if one or more of the partners cease to be partners or one or more new partners are admitted, in such circumstances that one or more of the persons who were partners of the firm before the change continue as partner or partners after the change ; or

    (b) where all the partners continue with a change in their respective shares or in the shares of some of them :

    ***Provided** that nothing contained in clause (a) shall apply to a case where the firm is dissolved on the death of any of its partners.”*

- Change in constitution means a change in personnel and not merely in PSR of partners [Moolji Sicka (1938) 6 ITR 234, Srinivasa Rao & Bros. (1967) 63 ITR 102, in context of 1922 Act where provision along lines of s.187(2) was absent]

Thoughts/issues on scope of “reconstitution” or dissolution

- Merger of firms or succession may involve winding down of existing firm, but so long as there is no receipt by partners of capital asset/money/other asset, difficulty does not arise
- Conversion of partnership firm into company under Chapter XXI of Companies Act, 2013 is unlikely to be considered as ‘reconstitution’ – there is no modification in status of partners – partners of firm continue as shareholders
- Reconstitution may involve admission as well - on case of admission, existing partner’s capital account may be credited by value attributable to past goodwill - will proposed s.45(4)/(4A) trigger liability if existing partners withdraw cash represented by revaluation?

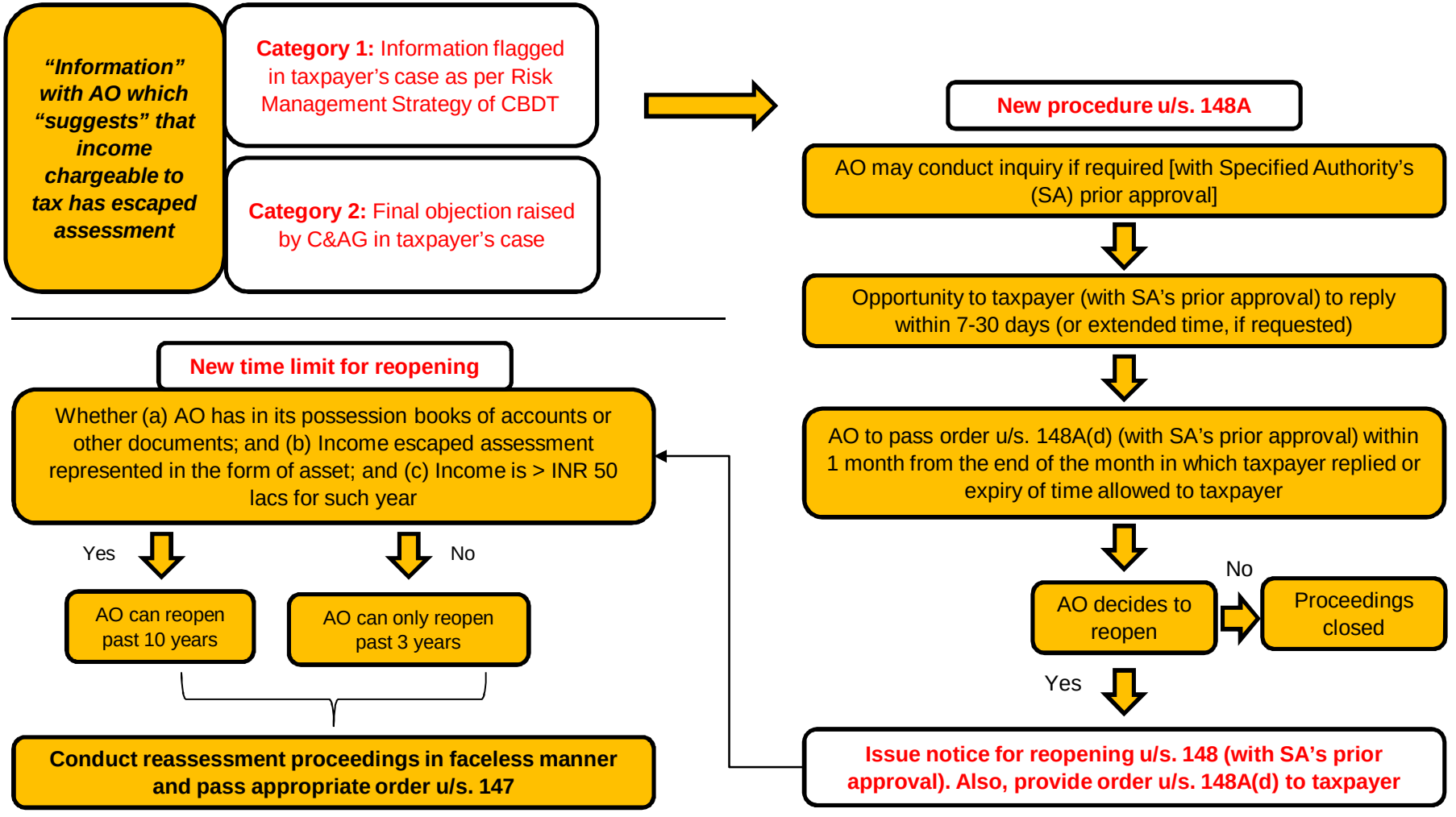
Revamped procedure for reassessment and search assessment

Revamped procedure for reassessment and search assessment

Existing Provision:

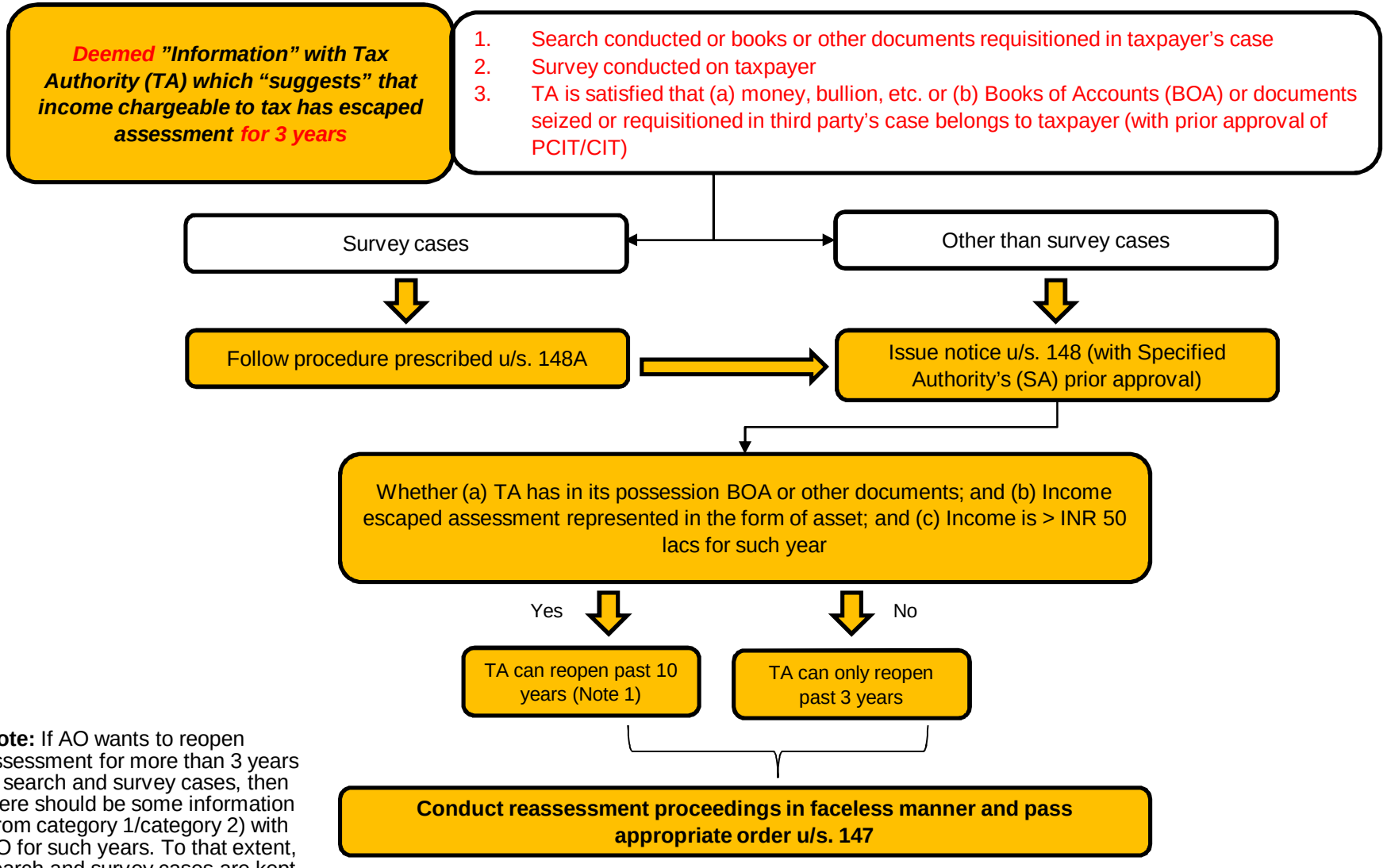
- S. 147 of the ITA empowers Tax Authority to reopen concluded assessment for assessing any income which has escaped assessment
- Primary condition for reopening was presence of ‘reason to believe’ with Tax Authority that some income has escaped assessment
  - The scope of the expression ‘reason to believe’ was always a subject matter of litigation till SC.
  - Courts have taken a view that ‘change of opinion’ cannot be considered as ‘reason to believe’ for reopening any assessment
  - Subsequent judicial development may be one of the reasons for reopening of assessment
  - There should be some tangible material with Tax Authority for exercising these powers. Further, the material should have ‘live link’ with the reason to believe that income has escaped assessment. Reopening on the basis of assumptions or surmise was considered as bad-in-law
- Reassessment could not be initiated beyond 4 years where there is prior scrutiny assessment under s. 143(3) of the ITA unless there is failure by taxpayer to disclose fully and truly all material facts necessary for his assessment.
- Separate period of limitation of i.e. 4 years (general cases), 6 (specified cases) and 16 years (undisclosed foreign asset or income cases) for reassessment was prescribed

Proposed provision - Flow chart (Regular cases)



Specified Authority means (a) PCIT/PDIT/CIT/DIT in case of reopening upto 3 years or (b) PCCIT/PDGIT/CCIT/DGIT in case of reopening upto 10 years

Proposed provision Flow chart (Search and survey cases)



Note: If AO wants to reopen assessment for more than 3 years in search and survey cases, then there should be some information (from category 1/category 2) with AO for such years. To that extent, search and survey cases are kept at par with regular cases

Impact analysis

- **Time limit for reopening of assessment:**
  - 3 years from end of relevant AY (except in cases discussed below)
  - 10 years from end of relevant AY where
    - AO has books/ documents/ evidence in possession which reveal taxable income,
    - which is represented in the form of an asset, and
    - escaping assessment of minimum Rs. 50L
- Above time limits do not apply to cases where notice u/s 153A or s. 153C [in relation to search u/s 132 or requisition of books or documents u/s 132A] is required to be issued **on or before 31 March 2021**.
  - Provisions of s. 153A/153C will not apply in case of search initiated on or after 1 April 2021. Thereupon, the assessment would be governed in terms of new regime
- While determining period of limitation as aforesaid, following period is required to be excluded:
  - Time allowed to taxpayer to reply to SCN u/s 148A of the ITA
  - Time period for which s. 148A proceedings are stayed by a court order/ injunction
- AY 2020-21 and prior AYs are grandfathered where the time-limit for issue of notice u/s 148 under the old regime [6 years as per s. 149(1)(b)] has not already expired as on the date of issuance of notice.

Impact analysis

- Conditions for reopening appear to be exhaustive (except for search and survey cases):
  - **Condition 1:** Information flagged by Risk Management Strategy formulated by CBDT
    - Scope of expression ‘information’ may be litigation prone
    - Risk Management strategy may change on Y-o-Y basis
    - Information should have linkage with actual escapement of income

Is Information	Is Not Information
• SC, HC or Tribunal rulings (including in Taxpayer’s own case for earlier years) • Retrospective Legislations • Information available at time of original assessment but not considered by Tax Authority due to oversight, inadvertence or a mistake • DVO Valuation Report where called for during course of assessment but received post assessment • Discovery of new and important matters or knowledge of fresh facts which were not present at the time of the original assessment • Information should be of a nature as to acquaint, enlighten or instruct the mind of Tax Authority for first time concerning a matter	• Audit Objection • Note of Ministry of Law • CBDT circular providing opinion on interpretation of law • Change of opinion by any tax authority • Gossip, any inference or surmise drawn by a person from certain facts which are assumed to exist and not supported by any data • Any general opinion expressed by a person not qualified, experienced or acquainted with the subject-matter • General investigation reports which merely raise suspicion but do not provide credible information of escapement of income

Impact analysis

- Conditions for reopening appear to be exhaustive (except for search and survey cases):
  - **Condition 2:** Final objection raised by C&AG
    - Exact scope of 'final objection' is not very clear
    - Under the old regime, objection of C&AG is not considered valid basis for forming reassessment opinion [Illustratively, refer CIT v. Jyoti Ltd 112 ITR 973 (Guj HC)]
- **Levy of penalty u/s. 270A:**
  - Mere inclusion in ROI filed pursuant to notice u/s 148 may not be sufficient to defend penalty u/s. 270A of the ITA
    - Under-reporting of income covers (i) filing of return first time pursuant to notice u/s 148; and (ii) income reassessed is greater than the income assessed/reassessed earlier (S. 270A(2))
    - S. 270A(3)(ii) provides for computation of under-reported income – Amount of under-reported income shall be difference between income reassessed and the amount of income assessed/reassessed earlier (viz. Nil in case no ROI filed previously and no assessment was made)
  - Taxpayer may be able to claim benefit of s. 270A(6) of the ITA illustratively cases where a bona fide explanation is provided to the satisfaction of Tax Authority and all material facts have been suitably disclosed.
- **Food for thought:**
  - Whether theory of 'change of opinion' prevails under new regime?
  - Whether protection for full and true disclosure by taxpayer for reopening beyond 4 years under old regime is available with taxpayer?
  - In a case, where reassessment notice is issued for Income A, whether AO can asses Income B independent of Income A under new regime?

S. 194Q: Deduction of TDS on payment of certain sum for purchase of goods [w.e.f. 1 July 2021]

S. 194Q: Deduction of TDS on payment of certain sum for purchase of goods [w.e.f. 1 July 2021]

- New tax withholding provision has been introduced wherein the buyer while making payment to resident seller for purchase of goods having value exceeding fifty lakh rupees in the previous year is required to withhold taxes at the rate of 0.1%.
  - Deduction shall be at the time of credit of such sum to the account of the seller or at the time of payment by any mode, whichever is earlier
  - Provisions are attracted even is the amount is credited to 'suspense account'
  - Person responsible for paying taxes is the Buyer
- EM does not provide intention of introducing this provision, however it appears that it is brought to deepen tax net
- 'Buyer' is defined as a person whose total sales, gross receipts or turnover from the business carried on exceed INR 10cr during immediately preceding financial year in which the purchase of goods is carried out.
- Above provisions would not be applicable in cases where payment is already subject to TDS under other provisions of the Act or TCS u/s. 206C other than s. 206C(1H)
  - However, 194Q overrides the s. 206C(1H) provisions.
  - S. 206C(1H) proviso excludes TCS obligation if TDS applies
  - Also, unlike TCS being linked to actual receipt, TDS triggers at the earlier of credit/payment to seller and may precede TCS

S. 194Q: Deduction of TDS on payment of certain sum for purchase of goods [w.e.f. 1 July 2021]

- In case where buyer fails to furnish PAN, then in such cases the rate of 5% would be applicable instead of rate 0.1%.
  - Consequential amendment made in s. 206AA
- CG is empowered to exempt a person from obligation under this section on fulfilment of conditions as may be specified, by notification in Official Gazette.
- Further, CBDT with prior approval of CG may issue guidelines for removal of difficulties and the same shall be binding on Tax Authorities and person liable to deduct tax.
  - Above two provisions comparable to TCS u/s. 206C(1H)
- Amendment will come into effect on 1 July 2021.

S. 194Q: Deduction of TDS on payment of certain sum for purchase of goods [w.e.f. 1 July 2021]

Buyer

Purchase of goods

✓ Payment for goods of value exceeding INR 50 lacs

✓ Deduction of TDS @ 0.1% (in case of no PAN/Aadhaar @ 5%)

Seller

Buyer	Other points	Seller
► Applies if its total sales, turnover or gross receipts from the business > INR 10 Cr in the preceding FY ► Applicable only if the amount exceeds INR 50L ► Buyer can be R or NR ► Likely to be notified for exclusion ► Defensible on extra territorial for NR who has no presence in India ► Would cover all except: ► TDS is deductible under any other provisions ► TCS collected u/s 206C other than transaction 206C(1H) applies	► All qualifying buyers in B2B and B2C transactions are covered ► Could have multiple TDS effect in chain transactions i.e. purchase by A from B, B from C, C from D ► Transaction of sale of goods covered – does not apply to supply of services ► Goods not defined like s.206C(1H) ► In case of overlap of provisions between 206C(1H) and 194Q, supported also be EM s. 194Q will apply ► TDS to be deducted on the excess amount of INR 50L	► Seller should be a resident for the provisions to be applicable ► Limit of INR 50L is qua each seller

Nuances related to applicability of s. 194Q

- There is no clarity for treatment of trade discount, rebate or cash discount
  - Ideally net consideration as recorded in the books or actual payment may be considered
- Treatment for GST – Whether to be excluded?
  - Past Circular issued in the context of TDS and GST applies for services.
  - Circular No. 17/2020 on TCS on sales clarifies that in relation to s. 194-O, withholding should be on 'gross basis' (without making any adjustment for GST)
- Transitional issues for FY 2021-22
  - Purchases made between April to June 21 to be included for reckoning Rs. 50 L threshold?
  - Advance received prior to 1 July 2021 and sale made after 1 July 2021
  - Also, such transaction could be subject to TCS on receipt basis
- In case of retail sale of motor vehicle > Rs. 10 lakhs, seller will need to collect TCS @ 1% even if buyer fulfils conditions of s.194Q
- Hopefully, some of the relaxations provided in Circular No. 17/2020 may also be provided for TDS u/s. 194Q like exchange traded transactions, transitional issues, etc.
- Accordingly, listed shares traded on stock exchange or other transactions on commodity/other exchanges may likely get excluded

Nuances related to applicability of s. 194Q

- Clarity around the scope of the term ‘goods’ -
  - Definition not provided in s. 194Q and also for s. 206C(1H) and s. 194O previously – Difficulties have arisen on interpretation of the term.
  - Goods is defined in CGST, 2017 and Sale of Goods Act 1930 (SOGA)

Whether covered as goods	CGST 2017	SOGA 1930
Moveable property	Yes	Yes
Immovable property	No	No
Shares & Stock	No	Yes
Securities	No	No
Money	No	No
Foreign Currency	Yes	Yes
Actionable claim	Yes	No

Nuances related to applicability of s. 194Q

- Transactions in unlisted shares would be covered within the scope of this section?
  - While clarifications are awaited, it also needs to be clarified that s. 194Q would not apply to transactions carried through the Exchanges as clarified in case of TCS
- Applicability of s. 194Q in the context of slump sales and other forms of business acquisitions needs to be evaluated
- If seller is Government, local authority etc., to evaluate if other TDS exclusions apply

S. 206AA- Non furnishing of PAN for TDS for sale of goods [w.e.f. 1 July 2021]

S. 206AA- Non furnishing of PAN for TDS for sale of goods [w.e.f. 1 July 2021]

- **Existing provision:**
  - Every payer that is bound by TDS provisions is required to furnish PAN
  - When the recipient does not furnish PAN, s. 206AA will trigger and payer is bound to deduct tax at a higher rate for the recipient i.e.
    - At the rate specified in the relevant provision of the Act;
    - At the rate or rates in force, i.e., the rate prescribed in the Finance Act;
    - At the rate of 20%
- **Proposed amendment**
  - A new proviso to s. 206AA is proposed to be inserted to provide a lower rate of 5% instead of 20% for non-furnishing of PAN for s. 194Q i.e. for purchase of goods
    - Akin to first proviso to s. 206AA which was introduced to penalise the s. 194-O transactions in the absence of PAN
  - Proposed amendment will come into effect on 1 July 2021
  - S. 206AA(7) r,w. Rule 37BC which relaxes the PAN condition by furnishing other listed documents is applicable only to payments made to a NR. Hence, inapplicable here.

S. 206AB & S. 206CCA - Special provision for higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

S. 206AB & S. 206CCA - Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

Background:

- Acknowledging how s. 206AA and s. 206CC provisions have helped to motivate tax payers to obtain a PAN, Government has now proposed to insert new s. 206AB (for TDS) and s. 206CCA (for TCS) to similarly motivate tax payers to file tax returns on time.
  - FB 2021 proposes to insert a new provision to provide punitive rate of TDS/TCS for non-filers of ROI
    - In order to ensure filing of return of income by persons who have suffered a reasonable amount of TDS/TCS, these penal rates have been introduced.

S. 206AB & S. 206CCA - Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

- **Proposed provision (S. 206AB):**
- Any person (deductor) making payment to **a specified person** (deductee) will be required to deduct tax on amount paid, or payable or credited, **higher of the following rates**:

  (i) at twice the rate specified in the relevant provision of the Act; or

  (ii) at twice the rate or rates in force; or

  (iii) at the rate of five per cent.

- "Specified Person" means any person:
  - Who has not filed ITR for two preceding AY immediately prior to the PY in which tax is required to be deducted and for which the time limit to file ITR u/s. 139(1) has expired ; [**ROI condition**] and
  - **The aggregate amount of TDS and TCS** in his case exceeds INR 50,000 or more in each of these two PY. [**Threshold condition**]
- This is an non-obstante provision and will override the TDS rates under the Chapter XVIIB (**except** where TDS is required to be deducted u/s. 192, 192A, 194B, 194BB, 194LBC or 194N)
- Provision will not apply to a non-resident who does not have a PE in India

S. 206AB and S. 206CCA- Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

- In cases where both s. 206AA (PAN) and s. 206AB (ROI) are applicable, TDS shall be deducted at higher of the rate prescribed under both the sections.
- Consequent amendment has been made in s. 194-IB(4) to include reference to s. 206AB.
  - S. 194-IB casts responsibility on certain individuals or HUF to deduct TDS @ 5% on payment of rent exceeding Rs. 50,000 p.m. during FY to a resident person.
  - Quantum of TDS after applying higher rate of TDS u/s. 206AB cannot exceed the rent payable for the last month of the year/tenancy
- Further, s. 206AB rate is not to be increased by surcharge & cess
- Proposed amendment will come into effect from 1 July 2021

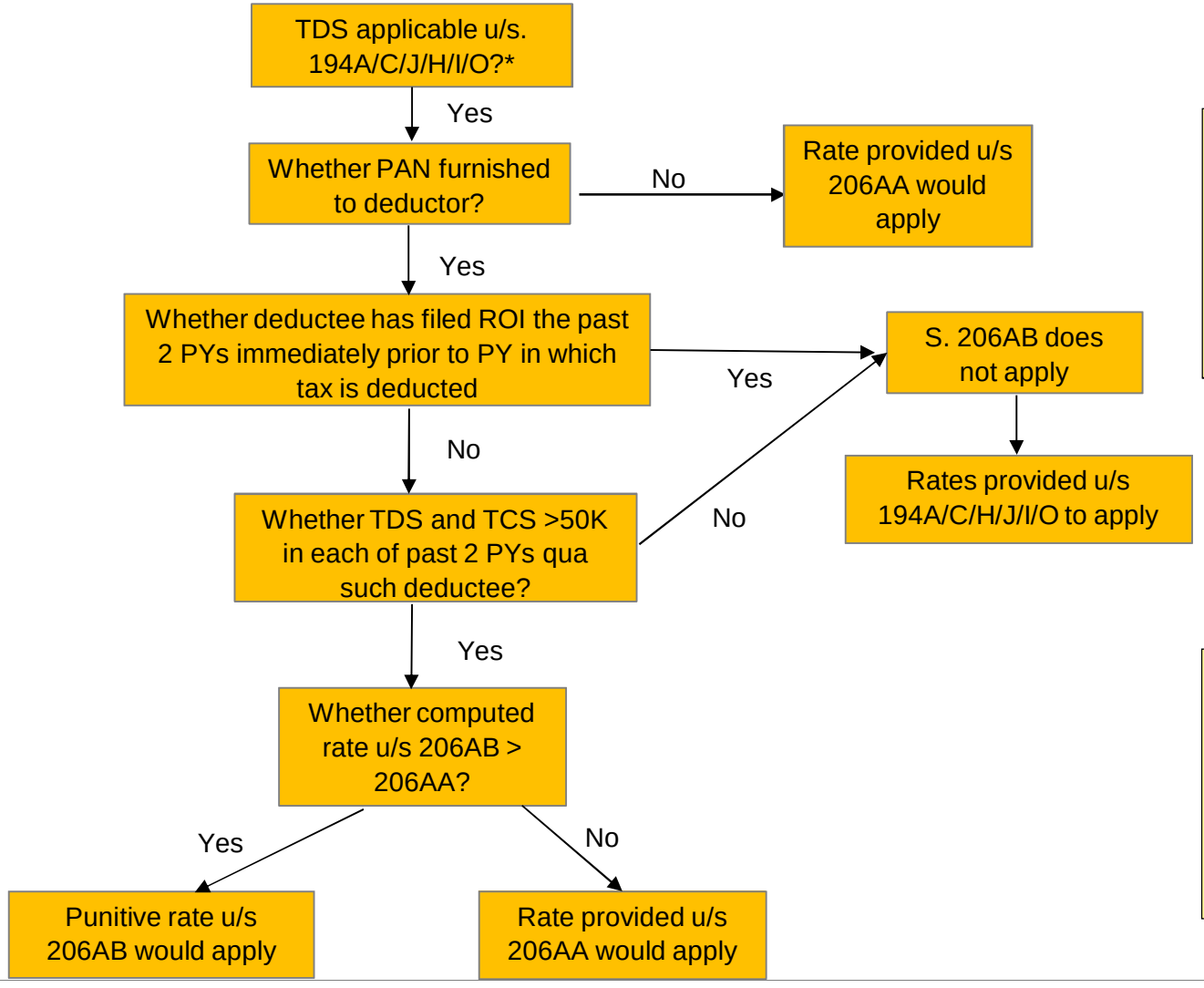
S. 206AB and S. 206CCA- Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

Proposed provision (S. 206CCA):

- Similar to s. 206AB, s. 206CCA has also been introduced in context of TCS
- All provisions as stated above, have been largely incorporated in s. 206CCA too. However, following aspects can be noted:
  - As per these provisions, any person (collector) receiving any sum from ***a specified person*** (collectee) will be required to collect taxes ***at a rate twice the rate of tax collection at source or 5%, whichever is higher.***
  - This is non-obstante provision and will override the TCS rates under the Chapter XVII-BB
  - If the provisions of s. 206CC (requirement to furnish PAN in case of TCS provision) is applicable to specified person in addition to this provision, TCS shall be at higher of the two rates provided in this section and s. 206CC.

S. 206AB and S. 206CCA - Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

- **Flow chart for interplay between s. 206AB and s. 206AA with TDS provisions:**



* Applicable to other TDS provisions as well such as S.193, S. 194, S.194A, S.194D, S.194DA, S.194E/EE, S.194F, S.194G, S.194K, S. 194LA/ LB/LBA, S.194LBB, S.194LC/LD, S.194M, 194-IA/ IB/ IC

Also, S.206AA applicability to NR qua interest, royalty, FTS, CG, dividend relieved under Rule 37BC while S.206AB made applicable to only to base rule PE in India.

S. 206AB and S. 206CCA - Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

Retain and refund scheme

- This punitive rate on the payee will be in addition to the interest, penalty, prosecution and other consequences of non-filing of ROI.
- Credit will be available to the payees for the higher taxes paid while filing his return of income

Interpretation of the threshold condition:

- To compute threshold of INR 50,000 or more, both TDS and TCS of respective FY needs to be aggregated.
  - For example: I Co is making FTS payment to Mr. A of Rs. 1 Lac on which TDS is required to be deducted u/s. 194J @10%. He had not filed ITR for last 2 PY and due date u/s. 139(1) has also expired. For each of the last 2 PY, tax deducted of Mr. A was Rs. 20,000 and Rs. 35,000 respectively and TCS collected was Rs. 30,000 and Rs. 40,000 respectively.
  - Aggregate of TDS and TCS in year 1 – 20,000 + 30,000 = 50,000
  - Aggregate of TDS and TCS for year 2 – 35,000 + 40,000 = 75,000
  - The condition of having TDS & TCS of Rs. 50,000 or more in each of the 2 FY is satisfied in the given case.

S. 206AB and S. 206CCA - Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

Whether threshold condition is qua deductor vis-à-vis the deductee or qua deductee?

- **View 1 : Threshold limit is qua deductor vis-à-vis deductee (i.e. Deductor has to verify whether aggregate TDS/TCS made by him vis-à-vis the deductee was Rs. 50,000 in each of 2 prior years)**
  - S. 206AB obliges deductor to verify conditions and apply higher TDS
  - Deductor can only verify information available with him and cannot verify deduction made by other third parties vis-à-vis same deductee
  - Law cannot envisage deductor to perform impossible task
- **View 2 : Threshold limit is qua deductee (i.e. Deductor has to verify whether aggregate TDS/TCS made by all deductors/collectors vis-à-vis the deductee was Rs. 50,000 in each of 2 prior years)**
  - The definition of 'specified person' is deductee centric. The requirement of ROI filing is associated with deductee, accordingly threshold condition of aggregate of TDS+TCS will be seen in a similar manner
  - The reference to 'his' in s. 206AB(3) is arguably to the deductee and CBDT may provide utility enabling payer to cross check the requirement. However, an alternative view point may not be ruled out while deductor may wish to go by conservative approach
  - For s. 194N, CBDT has made available functionality on website to check compliance of ROI filing. The same may be updated to provide information whether aggregate TDS/TCS of such deductee is more than Rs. 50,000 in both prior years.

Higher rate of TDS for non-filers of ITR (S.206AB) [w.e.f. 1 July 2021]

Interpretation of the ROI condition

- Mr A entered into a works contract with Mr B covered u/s 194C for an aggregate amount of INR 80,000 in August 2021.
- Section 206AB defines specified person as a person who has not filed his return **for immediately two preceding PY immediately prior to the PY in which tax is required to be deducted, for which due date for filing ITR u/s. 139(1) has expired.**
  - **The condition is that ROI is not filed for both of the relevant years**
- In the given scenario, the PY in which tax is required to be deducted is PY 2021-22
- Thus, two preceding PY immediately to PY in which tax is required to be deducted will be dependant on the due date of filling return. The following may be considered for payee assuring TDS is in August 2021:

Particulars	Individuals	Company/Person to whom Tax Audit is applicable	Person to whom Transfer pricing is applicable
Due date of filling return	31 July	31 October	30 November
PY to be considered	PY 2019-20 PY 2020-21	PY 2018-19 PY 2019-20	PY 2018-19 PY 2019-20

The years will change if TDS is in January 2022

S. 206AB and S. 206CCA - Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

Interpretation of ROI condition

- Akin to s.194N, look back period is rolling period of 2 years.
- ROI referred in the 'ROI condition' has to be original return as per s. 139(1)
  - Filing of ROI is sufficient even if it is beyond due date u/s. 139(1) i.e. belated ROI can also avoid punitive rate u/s. 206AB
  - ROI default condition is not satisfied if ROI is filed for any of the two prior PYs.
- One may wish to evaluate if s. 206AB will apply for s. 194P (for senior citizen) or not, as the new section itself relaxes ROI filing if TDS liability is discharged

S. 206AB and S. 206CCA - Higher rate of TDS/TCS for non-filers of income-tax return [w.e.f. 1 July 2021]

- Practical challenges to be encountered:
  - Proposed s. 206AB/206CCA places an additional burden on the person making/receiving payment to determine whether the recipient/payer qualifies as ‘Specified Person’ or not before determining the rate at which TDS/TCS should be applied.
    - For s. 194N, CBDT has made online facility available for checking compliance of filing ROI for last 3 years (but it does not give sufficient audit evidence to prove payer’s compliance).
    - Perhaps similar facility will be made available for s. 206AB/S.206CCA
    - Otherwise, it will be practically difficult for payer to check payee’s compliance of ROI filing and cumulative TDS/TCS exceeding Rs. 50,000 if such is the expected compliance.
- Question will arise if the payee has no requirement to file ROI.

Dispute Resolution Scheme

Dispute Resolution Scheme introduced - S. 245MA [w.e.f. 1 April 2021]

- New dispute resolution scheme (DRS) to be notified for resolving specified disputes in relation to specified Taxpayers
- New Dispute resolution committee (DRC) to be set up to undertake dispute resolution in a faceless manner involving dynamic jurisdiction
  - Constitution of DRC is yet to be decided.
- Overall scheme and scope of DRS is yet to be prescribed
- Key features of DRS:
  - Available on a voluntary basis to Taxpayers whose returned income does not exceed Rs 50L ; an alternate to appeal
  - And, variation in the specified order should be less than or equal to INR 10 lacs
  - Specified order should not have been passed pursuant to search or survey proceedings or pursuant of exchange of information under tax treaties/international agreements

Dispute Resolution Scheme introduced - S. 245MA [w.e.f. 1 April 2021]

- 'Specified order' as may be specified by CBDT including a draft order
  - Not clear on scope of draft order- whether draft assessment order covered under faceless scheme or order under s. 144C
  - Also, in case of draft order covered by s. 144C, AO can pass final order only pursuant to directions of DRP and within time specified therein. There is no amendment proposed in s. 144C and hence, cases of draft order unlikely to be covered unless further amendment is moved?.
- Possibility of waiver of penalty and/or immunity from prosecution under ITA being granted by DRC subject to conditions to be specified.
  - Present s. 270AA provides immunity from penalty and prosecution only if taxpayer accepts the assessment order without filing appeal against it and pays demand within 30 days period. As against that DRC provides for settlement of dispute on merits together with scope of waiver of penalty and prosecution. To that extent, for small cases, DRC may become relatively attractive option.
- Provision effective from 1 April 2021

Dispute Resolution Scheme introduced - S. 245MA [w.e.f. 1 April 2021]

Specified Taxpayer

- Persons or class of persons eligible to settle dispute under DRS to be specified.
- Such persons will be subject to following disqualification
  - Person in respect of whom a detention order is passed under The “Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974”; In respect of whom prosecution has been instituted and was convicted under the provisions of IPC, Benami Law, etc; In respect of whom prosecution has been initiated by Tax Authority for any offence punishable under ITA/IPC, etc.; Who has been convicted for an offence under ITA; or Person notified u/s. 3 of the Court (Trial of Offences Relating to Transactions in Securities) Act, 1992
- Disqualification is attached to “person” and not qua individual assessment year. Once person is found to be hit by disqualification, he is out of DRC for ever

Dispute Resolution Scheme introduced - S. 245MA [w.e.f. 1 April 2021]

- Power granted to CBDT to prescribe the following:
  - Rules for the working of the DRS
  - Persons or class of persons who can opt for the DRS and the conditions to be satisfied by them
  - Specified orders which may be eligible to be settled under DRS
  - Conditions subject to which waiver or reduction in penalty and/or immunity from prosecution to be granted by DRC
- Proceedings before DRC will be carried on in faceless manner. CBDT is authorised to notify
  - Provisions of the ITA which shall not apply on opting for DRS or
  - Provisions of ITA which shall apply with such exceptions, modifications, and adaptation as may be specified
  - Notification to be issued on or before 31 March 2023 and to be laid before each House of Parliament

Other important proposals

Reduction in time limit to file revised and belated return

- Currently, one can file belated or revised return on or before the end of the relevant AY or before the completion of the assessment, whichever is earlier.
- In light of massive technological upgrade in the Tax Department which reduced the time taken in conducting and completing the return filing process, FB 2021 proposes to curtail the due date of filing revised and belated return by three months. Thus, a revised or a belated return needs to be filed 3 months prior to the end of the relevant AY or before the completion of assessment, whichever is earlier.
- The below table depicts the changes in timeline in filing belated and revised ROI:

Particulars	Existing*	Proposed*
Due date for filing belated return	31 March of the relevant AY	31 December of the relevant AY
Due date for filing revised return	31 March of the relevant AY	31 December of the relevant AY

* Or before the completion of assessment, whichever is earlier

Reduction in time limit for completion of assessments u/s. 143 and 144 [S. 153 of the ITA]

- **Existing provision:**
  - Time limit for passing regular assessment order u/s. 143 of the ITA or best judgement assessment order under s. 144 of the ITA was 21 months from end of AY in which income was first assessable.
  - However, the said limit was reduced to 18 months in respect of order of assessment relating to AY commencing on 1 April 2018.
  - The said limit was further reduced to 12 months in respect of order of assessment relating to AY commencing on or after 1 April 2019.
- **Proposed provision:**
  - The said time limit is now proposed to be further reduced to 9 months in respect of order of assessment relating to AY commencing on or after 1 April 2021 (i.e. AY 2021-22 onwards.

Faceless Scheme for ITAT proceedings (w.e.f. 1 April 2021)

- FB 2021 proposes to insert new provisions u/s. 255 of the ITA to enable the CG to frame a faceless scheme for conducting ITAT proceedings so as to impart greater efficiency, transparency and accountability by:
  - Eliminating the interface between the Appellate Tribunal and parties to the appeal in the course of appellate proceedings to the extent technologically feasible;
  - Optimising utilisation of the resources through economies of scale and functional specialisation;
  - Introducing an appellate system with dynamic jurisdiction.
- CG is further empowered to issue directions by 31 March 2023 to the effect that any provision of the ITA shall not apply/ or shall apply with exception, modification and adaptions for giving effect to such scheme

Other important proposals

- **Settlement Commission (SetCom) -** Discontinued w.e.f. 1 February 2021
  - Interim Board for Settlement (IBS) for disposal of applications pending as on 31 January 2021
  - Taxpayer's will be given an opportunity to withdraw their applications before commencing proceedings before IBS
    - Pending proceedings will resume upon withdrawal of application
    - If application is withdrawn, material used before SetCom is not to be used by Tax Authority
- **VSV related amendment:** Any appeal/writ arising out of proceedings before Settlement Commission cannot be settled under VSV – Amendment is made retrospective w.e.f. 17 March 2020
- **IDS related amendment:** It is proposed that any refund granted under IDS of excess tax paid will be without interest

Questions???

Thank You !

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